

**IN THE JUSTICE OF THE PEACE COURT NO. 16  
OF THE STATE OF DELAWARE IN AND  
FOR KENT COUNTY**

**DE/RE INVESTMENT GROUP, LLC, :**

Plaintiff Below,  
Appellant,

v.

**C.A. No. JP16-18-007026**

**SHANAE KITCHING,**

Defendant Below,  
Appellee.

***TRIAL DE NOVO***

Submitted: December 7, 2018

Decided: December 7, 2018

Written Order Issued: December 13, 2018

DE/RE Investment Group, LLC, Plaintiff/Appellant, appeared represented by current Form 50 agent Priscilla Williams.

Shanae Kitching, Defendant/Appellee, *pro se*.

***ORDER***

Murray, J  
Tracy, J  
Edmanson, J

On December 7, 2018 this Court, consisting of the Honorable James A. Murray, the Honorable Dana M. Tracy and the Honorable Wallace G. Edmanson, acting as a special court pursuant to 25 *Del. C.* § 5717(a)<sup>1</sup> held a trial *de novo*<sup>2</sup> in reference to a Landlord/Tenant Summary Possession petition filed by DE/RE Investment Group, LLC, (hereinafter referred to as Plaintiff), against Shanae Kitching (hereinafter referred to as Defendant). For the following reasons the Court enters judgment in favor of the **Defendant**.

### **Factual and Procedural Background**

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court costs, and accrued rent. This action is based on the Defendant's failure to pay rent. Trial was held on November 7, 2018 and judgment was entered in favor of the Defendant.<sup>3</sup> Plaintiff filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled and held.

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<sup>1</sup> 25 *Del. C.* § 5717(a). *Nonjury trials*. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....

<sup>2</sup> *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary 435 (6<sup>th</sup> ed. 1990).

<sup>3</sup> *DE/RE Investment Group, LLC, v. Kitching*, Del. J.P., C.A. No. JP16-18-007026, Sherlock, J. (Nov. 7, 2018).

## Facts

*Salient facts:* Plaintiff submitted a lease agreement which established that a landlord/tenant relationship exists between the Parties.<sup>4</sup> The Parties entered into this relationship effective February 28, 2018 for the property known as 44 Courtside Drive, Apartment B33, Dover, DE, 19904. Monthly rent was to be paid on the first day of the month in the amount of \$952.00. Defendant was responsible to pay a security deposit of \$952.00.<sup>5</sup> The lease agreement also provides for a late payment of \$50.00 should tenant not pay rent in full on or before the 5<sup>th</sup> day of the month. Defendant acknowledged receipt of a copy of the Landlord/Tenant Summary Code<sup>6</sup> as well as a demand notice for rent and other charges.<sup>7</sup>

Plaintiff presented testimony which indicates she is seeking past due rent, late fees, possession and monies for damages to a door alleged to have been damaged by Defendant. Defendant presented opposing testimony contesting any past rent is due and asserted any damage to the door was not the result of any misuse by her.

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<sup>4</sup> Plaintiff exhibit #3. Lease Agreement.

<sup>5</sup> Security deposit is held at WSFS Bank.

<sup>6</sup> Plaintiff's exhibit # 3. Lease Agreement (last page list of enclosed documents).

<sup>7</sup> Plaintiff's exhibit # 2. Demand Notice Of Delinquent Rent.

## Discussion

When a tenant is in default of rent a landlord may demand a tenant to bring said rent current upon demand pursuant to 25 Del. C. § 5502.<sup>8</sup> The landlord must comply with the statutory requirements and the applicable case law. The landlord's demand for past due rent must be in written form to the tenant and said notice must contain the following as set forth by § 5502 and applicable case law in *Lasocha v. Weir*.<sup>9</sup> The *Lasocha* Court stated in pertinent part:

- (1) Notice must include the date in which said notice was written.
- (2) Notice must state the specific amount of rent due. (This amount **must be itemized** [emphasis added] so that the tenant may understand how the landlord determined the amount of rent being demanded).
- (3) Notice must identify the rental unit by address for which rent is being demanded.
- (4) Tenant(s) must be given a time period in which to cure non-payment of rent. This time period **shall not** be less than five (5) days.<sup>10</sup>

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<sup>8</sup> 25 Del. C. § 5502(a). A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

<sup>9</sup> *Lasocha v. Weir*, Del. J.P., C. A. No. JP16-08-003647, Arndt, J., Murray, J. and Pennella, J. (Sept. 8, 2008).

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Plaintiff's demand notice fails to itemize an amount which she is demanding.<sup>11</sup> Plaintiff's demand notice is captioned as follows: "**Five day notice to Cure Delinquent rent and other charges Amount owed: \$134.00**"; further, the first line of Plaintiff's demand notice states: "Please be advised that you owe rent and other charges as required in your Lease, in the above amount of **\$134.00** is now overdue." An amount demanded appears in two different locations within the demand notice, however, nowhere is an itemization included which identifies with specificity items (ex. unpaid rent, late fees, trash fees, etc...) which payment is being demanded and the amount demanded for each.

Plaintiff testified the demand notice includes back rent, late fees and damages. Late fees are addressed pursuant to 25 *Del. C.* § 5501(d) which states in pertinent part:

Where the rental agreement provides for a late charge payable to the landlord for rent not paid at the agreed time, such late charge shall **not exceed 5 percent** [emphasis added] of the monthly rent. A

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<sup>10</sup> 25 *Del. C.* § 5112. **Time computation.** In computing any period of time prescribed or allowed by order of the Court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run *shall not be included* [emphasis added] unless specifically included by statute, order or rule....When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays *shall be excluded* [emphasis added] from the computation.

<sup>11</sup> Plaintiff's exhibit #2.

late charge is considered as additional rent for the purposes of this Code....

Defendant's monthly rent is \$952.00. Five percent of \$952.00 is \$47.60. The lease agreement<sup>12</sup> pursuant to paragraph 2 states in pertinent part: "Additional rent in the amount of **\$50.00, as late charge**, is due if the payment is received **after the fifth (5<sup>th</sup>) day of the month.**" Charging the Defendant a \$50.00 late fee based on monthly rent of \$952.00 exceeds the 5 percent permitted under § 5501(d). By including an excessive amount for late fees in the demand notice, Plaintiff's demand notice is overstated. Plaintiff is demanding more money than she is entitled for late fees pursuant to § 5501(d). This alone makes Plaintiff's demand notice defective and when added with the fact Plaintiff failed to itemize her demand notice, Plaintiff's demand notice is defective for multiple reasons. Whereas Plaintiff's demand notice is defective, Plaintiff is unable to prevail at trial and, therefore, judgment shall enter in favor of Defendant.

The Court has opined on its reasons for determining why Plaintiff's demand notice is defective, therefore, the Court will not opine on the issue of the damaged door, other testimony or other evidence presented at trial as the Court addressed those in open court when announcing its decision.

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<sup>12</sup> Plaintiff's exhibit #3.

### Conclusion

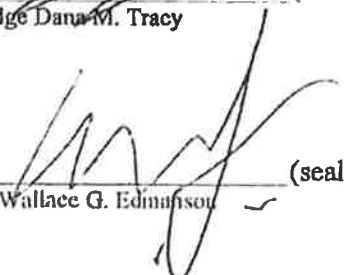
Based on the Court's fact finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous verdict enters *JUDGMENT for the DEFENDANT*.

The Court announced its decision and rationale in open court and reduced it to writing this date.

**IT IS SO ORDERED**, this 13<sup>th</sup> day of December, 2018.

  
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Judge James A. Murray (seal)

  
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Judge Dana M. Tracy (seal)

  
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Judge Wallace G. Edmonson (seal)

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